

1 Q All right. Do you recall any discussion with him
2 about this STA after you sent, sent the draft up for his
3 review?

4 A Not specifically, no.

5 Q All right. And the cover letter indicates a cc
6 to Mr. Nourain among other people. Did you in fact send
7 Mr. Nourain a set of copies of all these STA requests as
8 filed?

9 A Yes, I did.

10 Q All right. And again, just to clarify the record
11 here, do you now understand, do you not, that some of these
12 STA requests were for paths that were already operating?

13 A I now understand that, yes.

14 Q Okay. But at the -- as of May 4th, 1995, you sent
15 these to the Commission, you did not know that.

16 A That's correct.

17 Q All right. When you had the phone conversation
18 with Mr. Nourain the previous week in which he asked you to
19 file these requests in which he seemed agitated, did the
20 possibility occur to you that in fact the reason that he was
21 agitated might be that some of these paths were in fact
22 already turned on?

23 A No, it did not occur to me.

24 Q Did anyone else in your office review these STA
25 requests that were collected together in Exhibit 17 before

1 they were filed?

2 A Yes.

3 Q Who?

4 A Howard Barr.

5 Q Did you have any discussion with Mr. Barr about
6 the substance of these requests?

7 A Yes, I did.

8 Q As a result of that discussion, did you make any
9 changes in the draft of the request that you'd prepared?

10 A Yes.

11 Q Okay. Can you tell us what changes you made?

12 A I don't recall specifically.

13 Q Did you take anything out?

14 A No.

15 Q Did you put anything in?

16 A I don't recall. We were basically starting from
17 the ground up with these STAs. These were, these were
18 unlike the STAs that I had filed previously where they were
19 simply renewals.

20 Q Well, maybe my question wasn't clear. I was
21 assuming something that might not be correct. Did you
22 present Mr. Barr with a draft of a proposal?

23 A Yes, I did.

24 Q Okay. And the question I meant to ask was did
25 Mr. Barr take anything out of your draft? If you remember.

1 A I don't recall specifically.

2 Q Okay. Do you remember whether or not Mr. Barr put
3 anything into your draft that you had not included?

4 A Yes.

5 Q Do you remember what it was that he put in?

6 A No, I don't.

7 Q Did Mr. Barr indicate to you, well, did you have
8 any kind of discussion with Mr. Barr about these drafts?

9 A Yes.

10 Q Did he indicate to you in the discussion whether
11 or not independent of communications you had been having
12 with Mr. Nourain or Liberty that he also had been having
13 discussions with anyone at Liberty on this subject?

14 A I don't know if he indicated that to me
15 specifically that he was aware of that, yes.

16 Q Okay. Can you tell us how you were aware of that?

17 A He was in regular contact with other attorneys
18 representing Liberty with respect to the petition to deny.
19 so he would have had occasion to talk to other people at
20 Liberty.

21 Q Okay. Well, I want to clarify one part of your
22 answer. You said you would have had occasion to talk to
23 other people at Liberty. When you're saying that, do you
24 mean actual Liberty employees as opposed to say other
25 lawyers retained by Liberty?

1 A Both.

2 Q Okay. Now, if I'm not mistaken lawyers from I
3 think the Ginsburg, Feldman firm had entered an appearance
4 and Liberty's behalf in some of these applications, isn't
5 that right?

6 A Yes, I believe so.

7 Q And were you aware of whether or not Mr. Barr was
8 speaking with anyone from that firm?

9 A Yes.

10 Q Okay. He was?

11 A Yes.

12 Q Do you know whether or not anyone other than
13 Mr. Barr reviewed these May 4th STA requests in draft before
14 they went out?

15 A Yes.

16 Q Who else?

17 A As I recall, attorneys at Ginsburg, Feldman, Bress
18 and attorneys at Constantine & Partners. There could be a
19 few more that I'm not aware of at this time.

20 Q Did you speak with, did you yourself speak with
21 any attorneys of these two firms that you mentioned or are
22 you aware of conversations that Mr. Barr had with anyone?

23 A Not specifically, no. I don't recall having any
24 conversations with anyone.

25 Q Okay. But you're aware that Mr. Barr had

1 conversations with lawyers at those two firms.

2 A I'm not aware of that specifically. It's
3 possible, but I'm not aware of that specifically.

4 Q Was there someone else at your firm besides
5 Mr. Barr who was working on the Liberty Cable matter?

6 A No.

7 Q Just you and Mr. Barr?

8 A That's correct.

9 Q Okay. Do you know when the, when the other two
10 firms you've identified became involved in the
11 representation of Liberty Cable before the FCC?

12 A No, I don't know that.

13 Q Do you remember when you were first aware that
14 they were involved in the representation?

15 A I don't recall specifically, but it was around
16 this time.

17 Q This time meaning the end of April, the beginning
18 of May?

19 A Yes.

20 Q Of 1995?

21 A Yes.

22 Q All right. In the discussions that you had with
23 Mr. Barr over these proposed drafts of the STA requests, was
24 any mention made of the fact or even the possibility that
25 some of these paths were even in operation?

1 A No.

2 Q Do you know if your memorandum of April 28th
3 that's been marked as Exhibit 34 was transmitted either to
4 the Ginsburg, Feldman firm or the Constantine & Partners
5 firm before the STA requests were filed, the May 4th STA
6 requests were filed?

7 A I don't believe it was, but I don't know for sure.

8 Q All right. Had Mr. Barr worked with you on any of
9 the previous STA requests that you'd filed for Liberty
10 Cable? In other words, had he reviewed them in draft?

11 A Yes, he did.

12 Q Sam question with respect to the March 21, 1995
13 amendment that we marked earlier today as Exhibit 37?

14 A Yes.

15 Q Mr. Barr reviewed them?

16 A Yes.

17 Q All right. Do you know if anybody, any other
18 lawyers besides Mr. Barr reviewed the March 21, 1995
19 document?

20 A No, they did not.

21 Q Did you have any personal contact with any lawyer
22 at Ginsburg, Feldman or Constantine & Partners in
23 conjunction with the preparation of this May 4th STA
24 request?

25 A No, I don't believe I did.

1 Q Now, in response to some of the Judge's questions,
2 I think you indicated that when Time Warner Cable filed its
3 reply paper alleging the operation of two unlicensed paths
4 by Liberty, you had a look at that document, is that right?

5 A I had a look at that at that time. I haven't seen
6 it since, no.

7 Q At the time that you got that document, were you
8 surprised at the charges?

9 A Yes.

10 Q Did it occur to you -- well, strike that. The
11 document identified by address, the two paths that Time
12 Warner claimed were operating without a license did it not?

13 A I believe so, yeah.

14 Q After you got a copy of the document, did you go
15 to your computer program that maintained the inventory,
16 status of Liberty's pending application and licenses and
17 feed in those addresses and attempt to determine whether or
18 not there was a license or an STA for either of those
19 addresses?

20 A No, I did not.

21 Q You weren't curious to find out whether or not
22 that charge was true or not?

23 A I was not, I was not handling the petitions with
24 regard to Time Warner.

25 Q Well, when you saw those addresses, did you

1 without even going to your computer immediately recognize
2 them as ones for which an application was still pending?

3 A I don't recall.

4 Q Did you discuss -- strike that. Did you discuss
5 the Time Warner paper with anyone at Liberty?

6 A No.

7 Q With Mr. Barr at your firm?

8 A Possibly.

9 Q Did you assist Mr. Barr in the preparation of a
10 surreply?

11 A No, I did not.

12 Q Did you, did you have occasion to read the
13 surreply at any time, either before it was filed or after it
14 was filed?

15 A Yes.

16 Q When did you read it?

17 A I believe it was after it was filed. I'm not
18 certain.

19 Q What was the occasion for your reading the
20 document?

21 A I honestly don't recall.

22 Q Okay. I'd like for you to turn to page, I'm
23 sorry, tab 18, Exhibit 18, Time Warner Cablevision
24 Exhibit 18 in the notebook. Do you have that in front of
25 you, sir?

1 A Yes.

2 Q Okay. Do you recognize that as a copy of the
3 surreply that Liberty Cable filed?

4 A Yes.

5 Q With the Commission?

6 A Yes.

7 Q I'd like you to turn to page three of the surreply
8 that has the number 003 at the bottom near the right side of
9 the paper. Do you have that in front of you?

10 A Yes.

11 Q There's a statement there that says Mr. Nourain
12 perhaps unadvisedly assumed a grant of the STA request which
13 in his experience had always been granted within a matter of
14 days of filing and thus rendered the paths operational.
15 When you read this document the first time that you saw it,
16 could you, do you remember thinking whether there was any
17 basis for Mr. Nourain to say that he assumed a grant of STA
18 requests?

19 A Yes. I mean, I had no -- I had no idea what he
20 was talking about.

21 Q I mean, didn't it strike, I mean, didn't it strike
22 you as inconsistent with what you knew about all the
23 conversations that you testified to with Mr. Nourain that he
24 would assume that STA request had been filed, much less
25 granted, for these paths?

1 A Without speculating too much, I would -- I would
2 assume here that we had been filing STA requests although
3 they were renewals of existing STAs and, and that very well
4 could have been what he thought were new STAs. I mean, I
5 can't comment as to what he thought.

6 Q Do you know --

7 A We had discussed STAs in the past.

8 Q Based on the conversations that you had with
9 Mr. Nourain and you testified to since the beginning of
10 calendar year 1995, do you know of any basis for Mr. Nourain
11 to assume that STA requests were filed for these paths, that
12 is for the paths that were newly applied for?

13 A No.

14 Q I'd like you to read the next sentence about two
15 sentences down the paragraph and I'll read it in the record.
16 To compound the situation, the administration department
17 failed to notify Mr. Nourain that grant of Liberty's
18 applications was being held up indefinitely as a result of
19 the Time Warner petitions. Now, again, Mr. Lehmkuhl, on the
20 basis of your conversations with Mr. Nourain during the --
21 from January, 1995 up through the last week in April of
22 1995, do you know of any basis for Mr. Nourain to claim that
23 he didn't know about that Liberty's application were being
24 held up as a result of Time Warner's petitions to deny? Is
25 there anything that you told him that would lead him to

1 believe that?

2 A No. I mean -- no. Could you just restate that
3 last question so I'm absolutely crystal clear as to what you
4 were asking?

5 JUDGE SIPPEL: You want it read back?

6 MR. BECKNER: If that's possible, I would prefer
7 it be read back.

8 [Whereupon, the tape was played back.]

9 MR. BEGLEITER: Your Honor, a belated objection.
10 There were two questions there. I don't know which one he
11 answered.

12 JUDGE SIPPEL: Is that what you wanted to hear
13 again?

14 THE WITNESS: Yeah, I was a little confused as to
15 what he was saying and what I was actually answering.

16 MR. BECKNER: Is your answer still no?

17 THE WITNESS: Yes.

18 MR. BEGLEITER: No to which question?

19 THE WITNESS: Now I'm confused.

20 JUDGE SIPPEL: Restate the question.

21 BY MR. BECKNER:

22 Q Do you know, Mr. Lehmkuhl, of any basis -- and
23 again, I'm asking you on the basis of your recollection of
24 the conversation you had with Mr. Nourain from January, 1995
25 through -- until the last week of April of 1995. Do you

1 know of any basis for Mr. Nourain to say that he did not
2 know that Liberty's applications were being held up
3 indefinitely as a result of the Time Warner petitions?

4 A No.

5 Q Now I'd like you to take a look, Mr. Lehmkuhl, at
6 a portion of what's been marked as Time Warner Cablevision
7 Exhibit 21 which is also in the notebook. And as soon as I
8 find where the portion that I'd like you to look at is, I'll
9 give you a page number.

10 JUDGE SIPPEL: Why don't we go off the record
11 until you find that?

12 MR. BECKNER: I've got that.

13 JUDGE SIPPEL: Back on the record.

14 BY MR. BECKNER:

15 Q If you'd turn to page stamped in small numerals at
16 the bottom center 019. It's the first page of what's filed
17 a declaration under penalty of perjury. I'll direct -- you
18 can read the entire declaration if you like. I'm going to
19 ask you in particular about paragraph five of the
20 declaration which is on the page that's marked 020. Let me
21 know when you've read it and I'll ask you the question I
22 have in mind.

23 A Okay.

24 Q All right. With respect to paragraph five,
25 Mr. Nourain's declaration says, he says, "I had no knowledge

1 that Time Warner was filing opposition against all of
2 Liberty's applications for microwave authorizations,
3 including the applications to provide service to the
4 locations Liberty was serving without authority until April
5 of 1995.

6 And my question to you again based on the
7 discussions that you had with Mr. Nourain from January of
8 1995 going forward in time until the last week in April of
9 1995, in your discussions you had with Mr. Nourain about
10 Time Warner's petitions to deny and Liberty's applications,
11 did you ever make a distinction or suggest that these
12 petitions to deny did not affect all of Liberty's
13 applications?

14 A No, I never said that.

15 Q And you did in fact from time-to-time discuss with
16 Mr. Nourain during this period Time Warner's petition to
17 deny and the effect that you foresaw of those petitions to
18 deny on the processing Liberty's applications?

19 A Yes.

20 Q I'd like you to turn to the last page of the
21 declaration, particular to paragraph nine. I'm going to ask
22 you a question about paragraph nine. So if you don't mind
23 reading it first and letting me know, I'll ask you the
24 question.

25 A Okay.

1 Q Okay. The first sentence of the paragraph says at
2 the time the paths were turned on, I was under the
3 assumption that each was covered by a grant of request for
4 temporary authority. I'm not going to read the entire thing
5 in the record, but I direct your attention to that sentence
6 and the last sentence which reads as I discovered too late,
7 my assumption was incorrect. That procedure had not been
8 filed and Liberty had never filed for or received special
9 temporary authority to operate the paths in question. And
10 again, Mr. Lehmkuhl, based on the conversations that you had
11 with Mr. Nourain from the beginning of January through the
12 third week, next to the last week in April, 1995, did you
13 ever indicate to Mr. Nourain that you were filing STA
14 requests during that period?

15 A Not for the, not for new paths being filed, no.

16 Q Excuse me?

17 A I may have discussed with him STAs that I was
18 renewing if there were in fact such STAs, one or two may
19 have still been in effect in January. I may have filed them
20 in January. I don't know. But, no, I did not have any
21 discussions with him about any STAs for new paths.

22 Q But your memorandum that you prepared
23 February 24th said that Liberty was no longer operating
24 under STAs.

25 A That's correct.

1 Q So in any event you wouldn't have even been
2 mentioning that after February 24th, correct?

3 A That's true. Yes.

4 Q All right. Now, this declaration that I just
5 asked you about, have you ever seen this before today?

6 A Yes, I believe I have.

7 Q When do you recall seeing it before?

8 A Back in June some time when it was filed.

9 Q You reviewed the declaration when it was filed?

10 A I don't recall whether I reviewed it when it was
11 filed. I believe it might have been some time after.

12 Q So did you have any responsibility for the
13 drafting of this declaration?

14 A No, I did not.

15 Q Do you know who aside from Mr. Nourain had
16 anything to do with the drafting of this declaration?

17 A I wasn't involved in this at all. I believe
18 Howard Barr may have had, may have helped in the drafting of
19 this.

20 Q Okay. And again just to make the record clear,
21 you think that when you did see this declaration it was when
22 you were looking at an as filed copy of the entire pleading
23 which included the declaration?

24 A I believe so, yes.

25 Q All right. Now, I'd like you to take a look at

1 Tab 25, Exhibit 25 in the big notebook. That's Time Warner
2 Cablevision Exhibit 25. Do you recognize this as a copy of
3 a microwave license application that you assembled and filed
4 on or about January 17, 1995?

5 A Yes.

6 Q Okay. Did you in fact prepare this application
7 using data from COMSEARCH and Liberty?

8 A Yes.

9 Q Okay. Now, the form 402 here also has Behrooz
10 Nourain's signature on it. Do you know whether or not this
11 is one that he signed in blank or did he actually review
12 this exact form and sign it?

13 A I don't recall with this application.

14 Q Okay. Did you send the application or any part of
15 it up to him for his review before you filed it?

16 A I don't recall.

17 Q Did you discuss the application or any part of it
18 with Mr. Nourain before you filed?

19 A I don't recall.

20 Q Do you know how you came to prepare this
21 application? I mean, what triggered your preparation of it?

22 A I would have to assume that it was done the same
23 way as all the others. When I received the information from
24 COMSEARCH, I began preparation of the application.

25 Q All right. Was the application reviewed in draft

1 by any other lawyer at your firm?

2 A Yes.

3 Q Who?

4 A Howard Barr.

5 Q Do you know if it was reviewed by any other lawyer
6 outside of the firm?

7 A No.

8 Q At the time when you filed these applications did
9 you know that some of the paths covered by the applications
10 were already in operation?

11 A No.

12 Q Did there come a time when you learned that?

13 A I believe so. I'm not, I'm not certain. I don't
14 know which of these paths are.

15 Q Well, maybe we can refresh your recollection.
16 Would you take a look at Exhibit 27, Time Warner Cablevision
17 Exhibit 27, which is a bunch of STA requests. Now, first
18 I'm just going to ask you do you recognize this as a copy of
19 STA request filed by you with the Commission on or about
20 July 24th, 1995?

21 A Yes.

22 Q Now, if you take a look at the, at the first
23 actual STA request pursuant to this collection, it has 002
24 marked in the right margin.

25 A Yes.

1 Q In the paragraph that really is right almost
2 opposite that little number talks about a path that had been
3 activated before the company had filed or received FCC
4 authorization?

5 A Yes.

6 Q Does that now refresh your recollection as to when
7 you learned that some of the paths that were covered by the
8 applications that we just discussed a few moments ago were
9 in fact in operation?

10 A Yes.

11 Q Did you, were you involved in the drafting of
12 these STA requests?

13 A Yes, I was.

14 Q Okay. The particular language I just directed you
15 to, did you write that initially or did someone else write
16 that?

17 A I did.

18 Q And in conjunction with whom if anyone did you
19 write this language?

20 A Howard Barr.

21 Q All right. Did you discuss the language with
22 anyone at Liberty?

23 A I don't recall specifically.

24 Q Now, these requests were signed by Peter Price,
25 the President of Liberty Cable.

1 A Yes.

2 Q Did you send these documents up to him in draft?

3 A Yes.

4 Q Okay. And so this signature of his was not drawn
5 on a blank form.

6 A That's correct.

7 Q All right. Do you recall any discussion at the
8 time that you were preparing these documents about the fact
9 that the applications which had been filed a week or so
10 earlier had not revealed the fact that some of the paths
11 were already active?

12 A No, I don't recall having any discussions about
13 them.

14 Q All right. How did you know to write this
15 disclosure in this particular paragraph that's opposite the
16 number 002 on the exhibit?

17 A I don't recall how I found that out specifically.

18 Q Well, did -- do you know who told you that one of
19 these paths was in operation?

20 A No, I don't recall.

21 Q Could it have been someone at Liberty or not?

22 A It's possible. It's very possible that I could
23 have, I could have received this knowledge from someone at
24 Liberty. It's possible from someone at Liberty from any of
25 the documents floating around in the process of the internal

1 review.

2 Q Well, tell me about what documents you saw that
3 were floating around in the process of internal review.

4 A I don't recall any specific documents.

5 Q Well, let me ask you to look at a couple of
6 documents and see if that refreshes your recollection at
7 all. If you would turn to Tab 24, Exhibit 24, also in the
8 notebook. Does this appear to you to be a copy of a
9 document that you might have seen before recognizing a
10 particular version is heavily redacted on the back pages?

11 A Yes.

12 Q So you think you might have seen a copy of this
13 document and that's what told you that some of these paths
14 were already in operation?

15 A Yes.

16 Q And do you know where this document came from?

17 A I believe I received a copy from Peter Price.

18 Q Okay. Did you know when you received it from
19 Mr. Price?

20 A Not specifically, no.

21 Q Was it before or after the applications for these
22 paths that you just looked at that had been filed?

23 A I don't recall specifically.

24 Q It could have been before the applications for the
25 paths were filed?

1 A I would assume that it was after. It was after
2 the applications and before the STA was filed.

3 Q Okay. Did you discuss this document with
4 Mr. Price?

5 A Yes, I did.

6 Q Okay. Was that a telephone discussion?

7 A Yes, it was.

8 Q Do you remember when that happened?

9 A I don't recall specifically. It was maybe some
10 time in June or July. I don't recall specifically.

11 Q Well, I'm a little confused here. In answer to
12 the previous question when I asked you when you got the
13 document, you said you thought that you had probably gotten
14 it after you filed the applications. Now, those were filed
15 in July. Do you think there's a possibility you got this
16 document in June?

17 A No.

18 Q I just want to be fair to you here.

19 A Right.

20 Q Okay. So you think you got the document some time
21 in July and you discussed it with Mr. Price in July?

22 A Yes, I discussed it immediately after I received
23 it.

24 Q Okay. Could it be that you had a discussion with
25 Mr. Price in June about a document like this that he said he

1 was putting together but that you didn't have yet?

2 A It's possible.

3 Q Did you have discussions with Mr. Price in June?

4 A It's possible, yes. I don't recall specifically,
5 but, yes, it's possible.

6 Q Okay. What is it that you remember that leads you
7 to say it's possible that you had discussions with Mr. Price
8 in June?

9 A Because before -- before May, I did not, I did not
10 have occasion to talk to Mr. Price. So it was any time
11 after that.

12 Q Well, why -- I mean, I understand that you
13 testified before May your dealings were exclusively with
14 Mr. Nourain of Liberty?

15 A Yes, that's correct.

16 Q Okay. Why did you come to deal with Mr. Price at
17 Liberty after May? What brought about that change in your
18 practice?

19 A It had now become -- I was told that Mr. Price
20 would be the one signing all the applications and that
21 Mr. Price was a lot more actively involved with regard to
22 the licensing process.

23 Q So would it be fair to say that he was substituted
24 for Mr. Nourain as your contact point at Liberty?

25 A Not substituted, but added to.

1 Q Okay. But the, if you remember a few minutes ago
2 we were looking at the applications that were filed on
3 July 17.

4 A Yes.

5 Q And they had Mr. Nourain's signature on them.

6 A Yes.

7 Q Had Mr. Price given approval for the filing of
8 those applications do you remember?

9 A I don't recall.

10 Q Do you recall telling him that you were going to
11 make those filings?

12 A I don't recall.

13 Q Now, you said a few minutes ago that immediately
14 upon your receiving this list that's been marked as
15 Exhibit 24 or at least an unredacted version of that list
16 you called Mr. Price and talked to him about it, is that
17 right?

18 A I'm not sure who initiated the phone call, but I
19 talked to him.

20 Q Okay. And what was the substance of that
21 conversation?

22 A Just basically this is -- he wanted to make sure
23 that I had received it and understood what this was.

24 Q I mean, did he explain to you the significance of
25 the various pieces of information on the list?

1 A Generally.

2 Q And did he tell you why he wanted to make sure
3 that you received it?

4 A Yeah. Well, it was in -- yes.

5 Q And why -- what did he want you to do?

6 A Use this in conjunction with the information that
7 I had in my database.

8 Q To do what?

9 A For filing applications and keeping track. This
10 was part of the new procedures.

11 Q Now, the numbers, I'm sorry, the dates that are on
12 this list, for instance, the path coordination date, the
13 license application date, STA application date and so on,
14 was that information that you supplied Liberty or did they
15 get that from some other source?

16 A I don't know where they got that. I don't know.

17 Q You didn't supply it to them?

18 A I have given information like that to Liberty
19 previously. So it's possible that, yes, they could use that
20 information that I gave to them. But with respect to this
21 document, I don't know where they got the information.

22 Q When you say you gave that information previously,
23 I mean, obviously you testified that you sent them as filed
24 copies of applications and STA requests which presumably
25 they had available to them, right?

1 A Yes.

2 Q And you testified that you sent them your
3 inventory of February 24th, 1995 which had some of this
4 information on it as well, correct?

5 A Yes.

6 Q So when you were saying there was information that
7 you had sent them, was that what you intended to mean?

8 A Yes.

9 Q Not anything specially prepared by you for the
10 purpose of this list.

11 A That's correct.

12 Q All right. Now, when you look at the first page
13 of this list, the so-called A list activated buildings with
14 flawed licenses, and you have the first three buildings
15 there, 440 East 56th and so on, when you look at this and
16 you saw that there was nothing filled in for an application
17 date and nothing filled in for an STA application date, did
18 that mean anything to you?

19 A Yes.

20 Q What did it mean?

21 A That the application hadn't been filed or at least
22 that Liberty didn't know whether the application had been
23 filed.

24 Q And did you also understand that these three,
25 first three buildings on the list were in fact already